



GLEANINGS

FROM

THE PUBLIC PRESS

RELATING TO THE APPOINTMENT

OF

THE HONORABLE J. R. GOWAN

TO

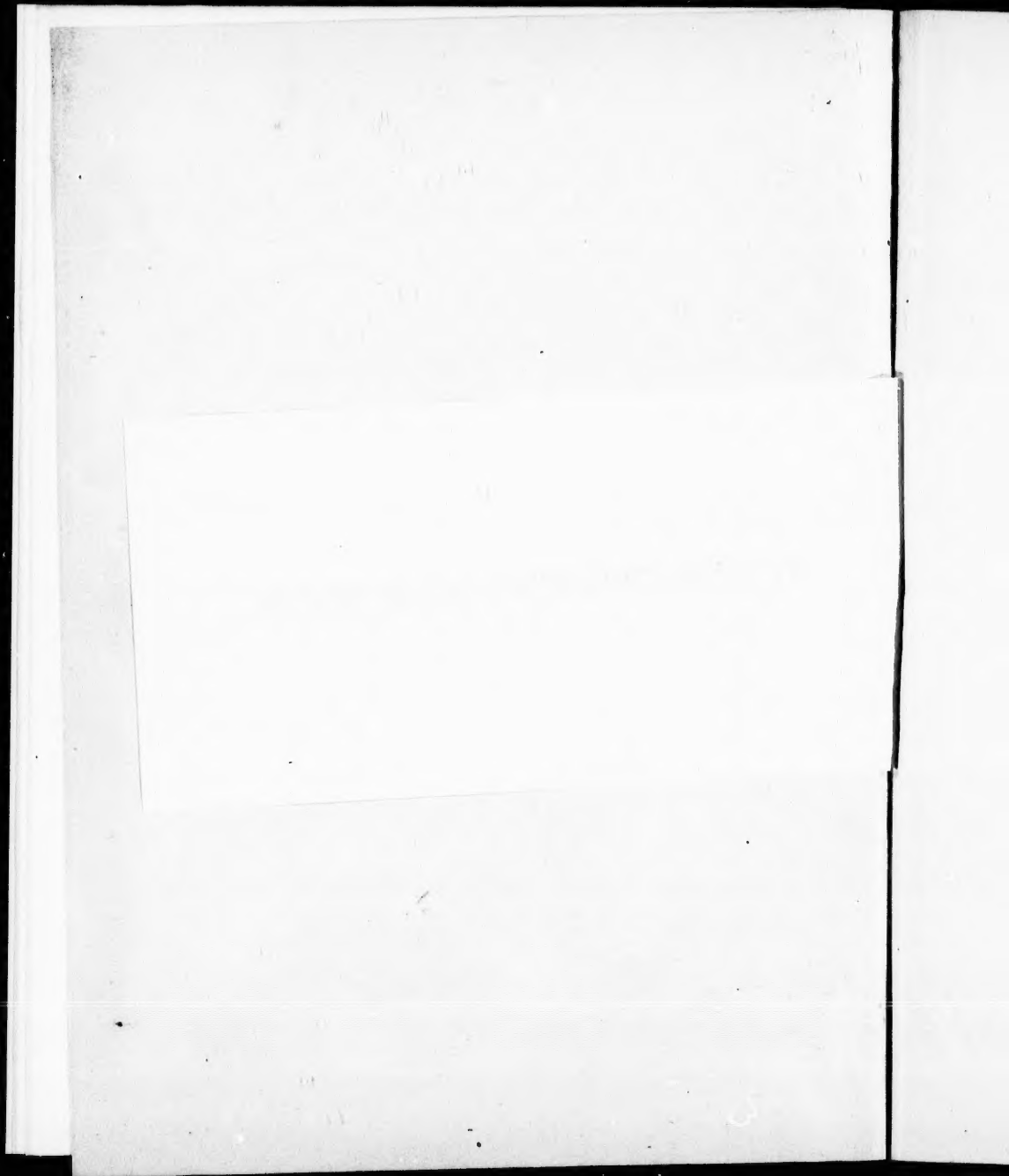
THE SENATE OF CANADA

BY

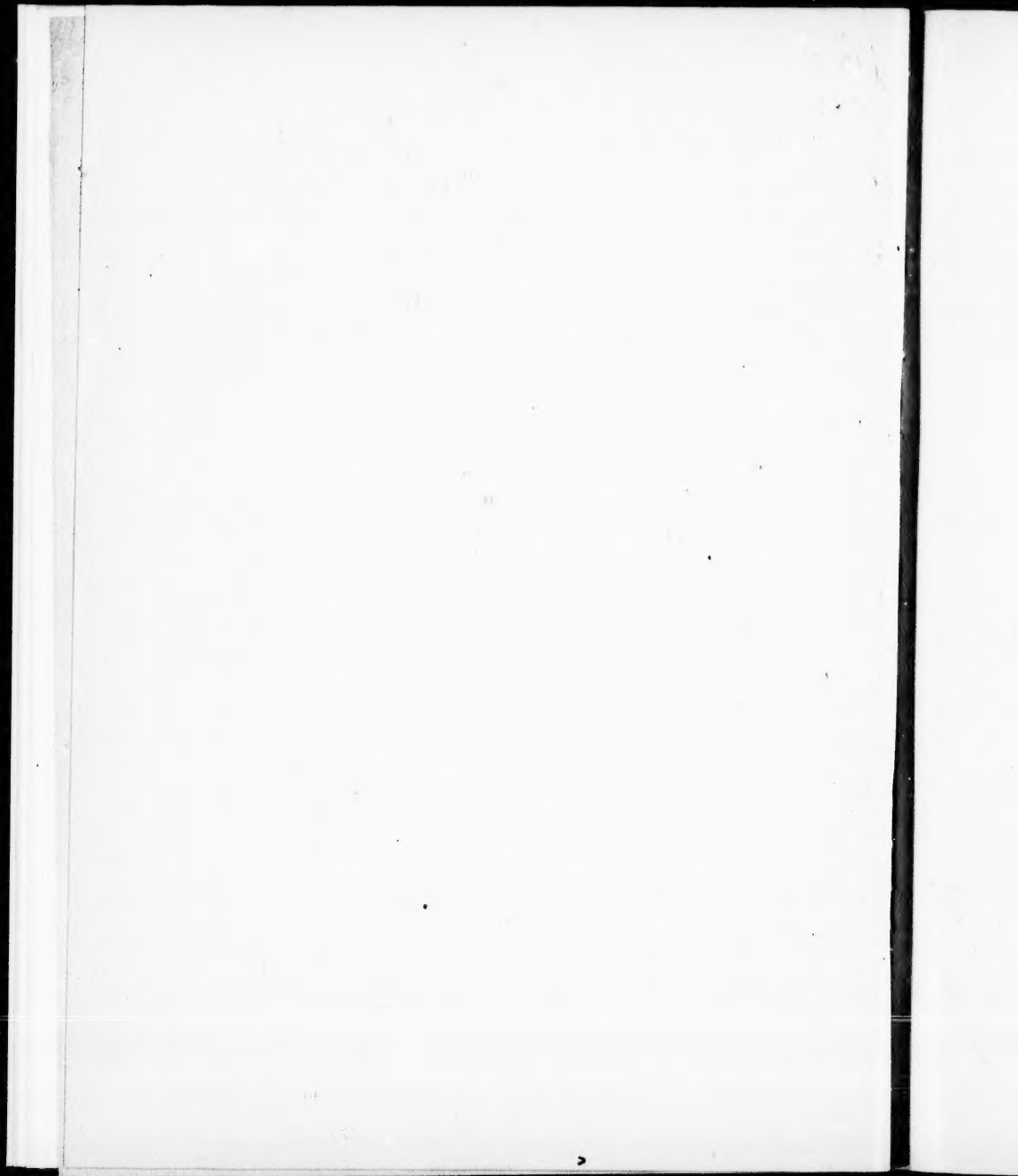
A MEMBER OF THE BAR.

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WITH THE COMPLIMENTS OF THE WRITER.







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THE retirement of His Honor Judge Gowan in October, 1883, called forth many expressions of respect and regard which were brought together, and last year printed in pamphlet form.*

In one of the addresses presented to the retired Judge, it was said †

"We feel satisfied, notwithstanding your retirement from the Bench that your matured knowledge will not be lost to the country, but that in some shape the community will yet have the benefit of the vast amount of experience that you have acquired during so long and active a public life." This expression proved to be a correct forecast. Mr. Gowan left for Europe immediately after his retirement, returning in the Autumn of 1884. He was not long allowed to remain in private life, for within three months after his return he was re-called to the service of his country in another field receiving the Queen's Summons to the Senate of Canada. Some reference to this appointment and the comments of the press thereupon, seem a fitting addenda to the compilation before referred to, and to bring together selections from what was said is the purpose of the writer of these pages, and they will show that, as in the case of his retirement from the Bench, "the old Judge's" appointment to the Senate called forth abundant expression of the public estimate of his worth.

* "Addresses and proceedings in connection with the retirement from the Bench of His Honor Judge James Robert Gowan with selections from printed matter touching his career compiled by a member of the Bar, August 1884."

† See page 34 of the above Pamphlet.

"The Senate in Canada stands in the same relation to the other House as the House of Lords to the Commons in England," and the Body possesses the independent powers and privileges of an Upper Chamber as a constituent part of the Parliament of Canada. The appointment of Senators is for life. The position of a Senator is therefore properly regarded as the most honorable distinction that can be conferred in this Dominion. Indeed the idea, as well as the intention of a second chamber would seem to be, that such body should comprehend men of high character and position, representing the professional and other prominent classes—men of mature judgment, animated by zeal for the public interests, rather than party attachments—men of independent means. In a word, educated, grave, fairminded men, imbued with a high sense of honor and true national spirit—"of the people and from the people," and possessing a deep stake in the welfare of the Country.

To proceed with the task the writer has undertaken.

The Ottawa correspondent of the *Toronto Mail* on the 27th January, 1885, writes to that journal:—"Judge Gowan has been appointed to one of the vacant Senatorships for Ontario, his well known ability and profound knowledge of legal lore will make Senator Gowan an acquisition to the Senate," and this was the first public intimation of the intended appointment. Her Majesty's writ summoning Mr. Gowan to the Senate is dated the 29th of the same month. The *Canada Gazette* of the 31st contains the official notice of three appointments to the Senate in the following order:—"His Honor James Robert Gowan, of Barrie; Dr. Michael Sullivan, of Kingston, and the Honorable Theodore Robitaille, of New Carlisle, member of the Privy Council, formerly Governor of the Province of Quebec."

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Before the issue of the Royal Gazette, a number of the leading public journals had referred favorably to the appointment of Mr. Gowan, and some extracts from these are subjoined. "No one will question the eminent fitness of His Honor Judge Gowan to be a Senator of the Dominion, even though that body were the most important branch of our Legislative system. His known ability as a jurist and his intimate acquaintance with all the varied needs of this great country, peculiarly fit him for Senatorial honors, or to hold a portfolio in some Government. And although it is many a long year since Senator Gowan took any part in Canadian politics, he has, as his friends are well aware, kept abreast with the times, and is really better posted on the leading political and social issues of the day than many an M.P. or M.P.P. He has had too, the advantage of having been able to take a dispassionate view of all questions before the country; and in this respect, as in some others, Senator Gowan will compare favorably with 'Bystander' in the view he takes of the measures agitating the country, for his mental vision is not obscured by Old Country notions or prejudices. He is gifted with a robust intellect, and so can never become a mere party man. He will in fact be as much an ornament of the Senate as he has been of the Bench these 40 years past. We heartily congratulate Judge Gowan on his appointment to the Senate, and hope he may be spared many years to do the country further service in his new sphere of usefulness." *

After giving a sketch of the Judge's career, the *Manitoba Free Press* of the 30th January, says :—"He is credited with being the author of a large amount of useful legislation before and since confederation; and is

* *Examiner*, January 29th, 1885.

"known to have more than once declined removal to the upper Bench. He has always had the good will of, and possessed influence with, every government, local or general, which has been in power since his appointment * * * * * His ability as a jurist and his general practical knowledge of business, and latterly his long experience, added to a great capacity for work, have in many instances enabled him to render valuable service to the Government of the day, and to the country."

"His call to the Senate must be looked upon as a recognition of merit rather than a political appointment. Judge Gowan's politics, when he was in a position to have any, being evidently (judging by his appointment) Baldwinite, or Reform. Judge Gowan is said to be still full of mental vigor and it is almost to be regretted that his talents as a legislator could not have been called into requisition in a more congenial atmosphere than that of the Senate Chamber. Judge Gowan has on many occasions during his judicial career, as well as at its close, been the recipient of flattering but well merited indications of the high esteem and appreciation in which he was held by the Bar and the people of the county in which he resided."

The *Barrie Gazette* of the 25th January, in announcing the appointment speaks as follows:—"Of the Judge's fitness for the position there can be but one opinion, that of his being thoroughly competent; his long service as a judge, now retired, entitle him to consideration."

It may be remarked that these extracts are from the Opposition press.

"It is almost unnecessary to add, said the *Toronto Mail*, that his elevation will give universal satisfac-

"tion; a profound and experienced lawyer, he also possesses a wide acquaintance with all the leading issues of the day." "There is not a man in the Dominion better fitted to do the duties of a Senator and to add dignity to the Second Chamber * * * His scholarly bearing, his vast legal attainments and the dignity and suavity of his manner will make Judge Gowan a real acquisition in the Canadian House of Lords."—*Barrie Advance*, 29th January.

"Every inhabitant of glorious old Simcoe, and many in every other portion of the Dominion, will read with pleasure that Judge Gowan has been appointed to one of the vacant senatorships for Ontario. His well known ability and profound knowledge of legal lore will make Senator Gowan an acquisition to the Senate. Dr. Sullivan of Kingston, has also been appointed to the Senate."—*Orillia Packet*.

"The two latest appointments to the Senate were not made from the ranks of the professional politicians, and that is at least something in their favour. One was a judge and the other a doctor, and so long as the Senate must continue to be constituted on the nominative principle the nominations should be made as much as possible from the ranks of the professional or mercantile classes. The country will thus be able to secure the services of representative men. Judge Gowan has done yeoman service on the Bench, and his long and faithful discharge of judicial duties deserves some such mark of national appreciation as that which has been conferred upon him. Dr. Sullivan, of Kingston, is one of the most popular Catholics in the country, and his elevation to the Senate will be especially acceptable to that section of the community. If the Senate is in the moribund condition it is represented as being, it is just as well to have a

"few doctors in at the death."—*Toronto Telegram*, 30th January.

"No more popular selection could have been made for this district. Had the office been elective, the leading men of both political parties would have united in choosing the Judge. He will honor the Senate, by becoming one of its number, more than that august body will honor him, by receiving him as one of its members. Had Sir John A. Macdonald been equally happy in his selection of Senators, as in the case of his first appointment from this county, the outcry against the Senate as a refuge for broken down politicians, would have been groundless. This most fitting appointment is, moreover, an incentive to our young men to be active and energetic, in the position into which the Great Creator has put them."

After referring to Mr. Gowan's appointment to the Bench at the early age of 24, and his long and earnest labors, especially to make the Courts as easy to the poor man as to the rich, the journal we quote adds, "And now in his declining years, with his natural powers as vigorous as ever honors are heaped upon him, which are the more valuable, because they are richly deserved. Our sincere wish is that the venerable Judge may be spared for many years to enjoy the rewards of his past labors and efforts to do good."—*Orillia Times*, 5th Feb.

Immediately after the official announcement in the *Gazette*, other leading journals commented upon the appointment. *The Week*, a thoroughly independent journal, and one of the ablest and best conducted on the Continent, in its issue of the 5th February, 1885, thus refers to the nominations:—"Judge Gowan is a personal and political friend of Sir John Macdonald, but he has never taken an active part in politics nor can his appointment be fairly said to be the reward of partizanship. By his long service in the Judiciary, and

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"by his liberal and comprehensive view of law, as well as by his character and position, he is well fitted to represent his profession in the Senate, and to play a useful part in moulding legislation, and especially in the codification of the law. The selection was as creditable as any selection could be in which party lines were not entirely ignored. We hailed it as a new departure, and began to surmise that beneficent influence might have been exercised in a quiet way by the Governor-General, who is ostensibly responsible, and to whom, in an hour so critical for Second Chambers, the condition of the Canadian House of Lords must be far from a pleasant spectacle." And in a later issue of this journal, while objecting to "investing men with legislative powers for life as rewards for party services which were not also services to the country" adds, "Mr. Gowan's services were services to the country."

"The Canada *Law Journal* of the 15th February, comments upon the nomination. "The appointment has been accepted by parties of all shades of politics as creditable to the Government of the day and an honor deservedly bestowed on a faithful servant of our country." * * * We look upon this appointment as the establishing of a happy precedent. A retired Judge whether of the County Bench or Superior Court, in many instances will preserve sufficient mental vigor and physical strength to discharge the duties of a legislator—especially in the less partizan atmosphere of the upper chamber of our Dominion Parliament. The appointment of Judge Gowan opens up a new and useful field for men of this class in which the ripened experience and trained abilities of some of our ablest judicial minds may find congenial occupation, and at the same time afford an honorable and fitting termination to many eminent careers."

Only one leading journal, the *Toronto Globe*, speaks in non-approving terms of the appointment. "We do not know that any remarks need be made on these Tory appointments, except that it is remarkable to find a gentleman unable because of infirmity to retain his seat on the Bench, selected for the Senate." This statement refers to Mr. Gowan, but is neither fair nor correct. It was not because the Judge was "unable because of infirmity to retain his seat on the Bench" that he sought retirement—though his tenure of office was for a longer period of actual service than that of any other judge in any Colony of the Empire, 15 years beyond the time he might have retired under the Statute. Indeed, he probably might have gone on for years at the full salary for such work as he was able to do. His own explanation as given in reply to the Bar address in 1883 is, "Let me say one word as to my retirement. As you are aware this is the largest judicial District in the Province, having a population not very long since, equal to that of Manitoba and British Columbia together. The duties are very onerous, requiring the services of at least two active men to perform properly with the promptitude demanded in the various duties made incident to the judge's office. And I felt the time had come, when in justice to the public and my brother judges, I should make way for a younger man. My age and uncertain health demanded more repose than I could properly ask or take, and so I sought retirement. And after 41 years of hard work it cannot be said that my appeal to be relieved was in any sense premature. Indeed I have the satisfaction of knowing that His Excellency appreciates, as he is pleased to communicate, my faithful, efficient and impartial conduct during my long term of Judicial Service," and continuing he said, "Should I return, as I trust I shall, with restored health, I hope to find some opening for usefulness, for I feel that I

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"am not without a residuum of energy, and I could not live an idle life." And that Mr. Gowan was willing at an advanced age to give his services to the country for some months every year is all to his credit. It is scarcely necessary to say anything of his mental fitness for the duties of a Senator; as expressed by leading Liberal journals in his own District. Mr. Gowan's "natural powers are as vigorous as ever" * * * "of his fitness for the position there is but one opinion, "that of his being thoroughly competent." and his record, during the first Session he attended, sustains the correctness of these assertions." *

He introduced four Bills into the Senate, three of them for amending the Criminal Law. Of these four Bills three passed the Senate, the fourth was rejected by a majority of one, but received the support of the Minister of Justice and the leader of the Opposition.

We observe also, Mr. Gowan's name frequently appearing in the debates, speaking, not merely on the Bills he introduced, but on the N. W. Property Bill, The Franchise Bill, The Maritime Court Bill, The Criminal Evidence Bill, The Temperance Act Amendment, on questions of Order, Divorce practice, Divorce cases and other matters. And that Mr. Gowan's usefulness was recognized in the Senate, the following extract from one of the public journals we think indicates:—

"Senator Power, an eminent lawyer from Halifax N. S., and a member of the Opposition, concluded his "speech in support of the Bill * * * * * "with the following reference to Senator Gowan:—"I

* In examining the Journals of the Senate and Hansard for 1885, we find that Mr. Gowan was appointed to and served upon three joint committees of both Houses—on the Consolidation of the Statutes, on the Library and on Printing, also on the committee on Standing Orders and Private Bills, and on several special committees. Acting as Chairman in three out of the six divorce cases that came before Parliament in the Session of that year.

"think that this Bill and two others which we have had before us already go to show the wisdom exhibited by the Government in placing the hon. member from Barrie in this Chamber. From his position, my hon. friend learns what the defects are which the judges, who are now on the bench, find in the criminal law, and he is able from his own experience to recognize defects that have existed for some time. Legislation such as he has introduced, is just the kind of work which is calculated to give this Senate weight and respectability through the country; and I think that measures of this sort do us a great deal more service in public estimation than debates, extending no matter how many weeks, on the general question of our utility."

"The Canada Educational Monthly" speaks also of the appointment as exceedingly popular, and refers to it as "an event of interest to all friends of education. The new Senator can probably claim to have served longer as a school trustee than any other man in the Province. He was, we believe, a member of the original Board of Grammar School Trustees at Barrie, more than 40 years ago, and he is to-day the respected chairman of the Collegiate Institute of that town."

One quotation more may be made from the *Irish Times* of February 19th, a leading paper in Mr. Gowan's native country. "It is with much satisfaction we learn from the journals of Canada, received by the mail delivered yesterday, that on the 3rd of the present month, a distinguished Irish jurist, who had before attained the highest distinction in Canada, for many years in a judicial capacity, and more lately as a principal commissioner for the codifying of the laws of the Dominion, has been raised to the dignity of the Senate of Canada by command of her Majesty. The Hon. James Robert Gowan, is a native of the County of Wexford,

"and a gentleman of genius and experience. * * *

"The universal respect in which the new Senator is held and his conspicuous fitness for the Council room of a great State must be a matter of pleasing record for all Irishmen who delight to hear of the superior display of talent and energy by their countrymen abroad, of the success which attends them in the noblest walks of life, and the usefulness to society of the career in which they have risen to eminence."

Amongst the congratulations offered to the newly appointed Senator there was one that seems to call for a fuller notice, namely, the address from the Council—the great representative body of the Judicial District in which he has resided for so many years. And the following account is condensed from reports by three of the public journals, representing both political parties in the County, namely, "The Gazette," "The Examiner," and "The Advance." The Council lost no time in congratulating His Honor Judge Gowan on his elevation to the Senate. A special committee was struck to frame an address as soon as it became known that the appointment had been made. It was carried by acclamation, and the Council then adjourned till 4 o'clock in the afternoon of the same day, the 6th February, 1885. At the hour named the Council assembled, and shortly after the newly appointed Senator and ex-judge entered the Council Chamber, and was conducted to a seat beside the Warden; the members and numerous visitors rising at his entrance. The address was read by the Warden as follows:

To His Honor James R. Gowan, late Local Judge of the High Court of Justice.

"We the members of the County Council of the County of Simcoe, have heard with extreme gratification that you have been called to the Senate of the

"Dominion of Canada, and we cannot allow the occasion to pass without extending to you our sincere congratulations on the high honor you have received. We feel both personally and collectively, that no better selection could have been made, and we heartily trust that you may be spared health and many years to enjoy your proud position. We venture to express the opinion that the intention of the founders of our Senate has been fully carried out in the elevation to that distinguished assembly of so eminent a public servant as yourself. You will bring to that body a mind highly cultivated and trained by a judicial experience of more than forty years, and never having taken a prominent part in the political warfare of the country, you will adjudicate on matters brought under your notice impartially and without bias. Having assisted in the Consolidation of our laws and been instrumental in framing many of our statutes which by their permanence on the Statute Book, testify to the thoroughness and foresight with which they are framed, it may safely be predicted that in your new and exalted sphere the country will gain the benefit of your matured experience in compiling other enactments equally advantageous to our Dominion at large.

"We have no doubt that the Chamber that you are now henceforth to occupy, will not only receive additional lustre from your presence, but that your wise counsel and clear intelligence will mould their discussions and affect the result of their deliberations in a marked and beneficial degree.

"As representatives of this large District, we feel a pride in reflecting that the advice and counsel you always so freely accorded us and which we were always willing to be guided by, have been recognized to be of such worth—recognized by the highest authorities of the State. And we trust that the wise

"and prudent advice so inculcated may ever be handed down to future representatives as a priceless tradition never to be forgotten.

Council Hall, Barrie, 20th January, 1885.

ROBERT T. BANTING,
County Clerk.

ROBERT PATON.
Warden.

"The Senator replied verbally with a good deal of feeling." Naturally, for he stood in the presence of prominent men who had known him for years, amongst whom he had spent the greater part of this life, and fulfilled the duties of the judicial position. He returned sincere and hearty thanks for the honor, said it was specially gratifying in view of its being unanimous, and because it represented even in committee, men of various political convictions coming from all sections of the District. The Senator continuing said: "Mr. Warden and Gentlemen, I would gladly take you into confidence if I had anything to impart; but you know almost as much as I do in respect to my appointment. "On Monday last I had the first intimation that it was desired I should take a place in the Senate. It was wholly unexpected by me, and I need scarcely say I never sought it. The offer was entirely spontaneous, and after seeing the few friends I could consult—seeing that a prompt answer was necessary—I determined with some misgiving to accept, for I could only bring to the place a residuum of former energy and much could not be expected in a man not very far from three score years and ten.

"Why the appointment was offered to me I can only surmise. I had neither suffered nor bled in political warfare, had not even drawn the political sword. If for a short time in early life I was in the heat of a political blaze, more than 40 years in the quiet shade was sufficient to remove dye or freckle. I had no claim of

"this kind to bring me into notice. Several members of the Government had known me for years and I have for them a warm personal regard and respect, especially for Sir John Macdonald, with whom I had more contact and for whom I occasionally worked as you know. But public men are not and ought not to be governed by personal feelings, and so I must surmise it was some supposed aptitude for the position that influenced my selection. You are good enough to think the intention of the founders of the Senate is fully carried out by my appointment. I hope you may be right. It is at all events most grateful to me to know that the action of the Government, so far as concerned me, meets your unqualified endorsation—a most valuable endorsation it is, from the freely chosen representatives of a district with a population not very long ago, exceeding that of two provinces in the Dominion, and now not far behind that of Manitoba and British Columbia together.

"You are pleased to say I may have some influence in the Senate. The utmost I hope for is to be of some use in a quiet way, and as I fancy the best part of the work in deliberative bodies is done in committee, a place of usefulness may be found for me—it is my only aim and will be my reward. If I find in the body to which I shall have the honor to belong, as much earnest, well directed effort as amongst you I shall be content.

In conclusion the new Senator again thanked them for their kind and courteous words and their promptness in endorsing his appointment by valuable and deliberate testimony."

"The Honorable Senator after greeting warmly several members of the Council, retired amid great cheering."

It was a magnificent and well deserved ovation by men of all parties, representatives of the people, to an eminent man who deserved well of his country—an

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honor few men could boast of—few could receive without being deeply touched.

It rarely falls to the lot of any one occupying a judicial position for over forty years to receive from public representatives of the people, men who knew him well, such a flattering demonstration of respect and regard. It may be mentioned that the address presented was subsequently engrossed and illuminated in high art, in a magnificently bound album and transmitted to Ottawa, to Mr. Gowan. His acknowledgements, addressed to John Dickinson, Esquire, Barrister, one of the Reeves and Chairman of the Committee appointed to prepare the address, afterwards appeared in the journals of the Council.

"I never saw" said the Senator, "anything of the kind better done, or in better taste, both as regards binding and illumination" * * * "Sending it to me here has enabled me to show to Senators and others this mark of your regard" * * * It was greatly and universally admired. Need I say "the Senator from Barrie" was gratified in the fact * * * "I have already told your Body how much I was touched by their extreme kindness, but I should like them to know what I now say."

The writer has in an early part of this paper referred to the Constitution of the Senate of Canada, and what in his judgment should be the requirements in the selection of Senators. What has been collected in the foregoing papers furnishes abundant proof that in Mr. Gowan's appointment these requirements were fulfilled, and moreover that it was a popular appointment, and, as was said in a leading journal, one opposed to the Government that appointed Mr. Gowan: "Had the office been elective the leading men of both political parties would have united in choosing him. He never

"took an active part in politics. His appointment was "not the reward of partizaniship." *

He himself said: † "The offer was entirely spontaneous. Why offered to me I can only surmise. I had "neither suffered nor bled in political warfare, had not "even drawn the political sword. * * * *

"I had no claim of this kind to bring me into notice. * * * *

So I must surmise it was some "supposed aptitude for the position that influenced my "selection. You are good enough to think the intention of the founders of the Senate is fully carried out "in my appointment."

"By his long services in the Judiciary" said the able writer in *The Week* "and by his liberal and comprehensive views of law as well as by his character and "position, he is well fitted to represent his profession in "the Senate, and to play a useful part in moulding legislation."

"With no political influence to wield," said *The Canada Law Journal*, "with no political ambition to "gratify, with no selfish purposes to serve, with means "sufficient to make him thoroughly independent of any "temptation to office, he is just the sort of man one "likes to see in the halls of the Legislature. His recommendation for the position was the record of a "long and useful public life, with abilities and experience far above the average. He will bring to the "discharge of his legislative duties a calm, highly "trained judicial intellect, a mind well stored, not only "with legal lore, but with a large fund of general information, which cannot but make him a most useful "member of the Upper House."

* "The Week," "Law Journal," &c.

† *Vide* reply to Address of County Council.

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Unexpectedly and unsought, the position came to him and it is believed that there is not one member of the Senate more thoroughly independent or less trammelled by party than he is. An incidental observation by Mr. Gowan in his speech on the Franchise Bill, gives some indication of his views on this point. He remarked: "Men summoned to the Senate are reasonably taken from amongst those whose views are in the main in accord with the Government of the day, and because of some fitness for the position. Will the most rabid politician contend for a moment, that any one appointed to this Hon. body in accepting the summons forfeits the right to think for himself in any measure that may come up, or surrenders his conscience to the sway of party, however much he may differ from his party on the particular case—of course not, the Senate could in such case have no attractions for an honest man."

These are not the sentiments of one bound hand and foot by party, but of a man prepared to take a dispassionate view of all questions before the country.

In bringing this paper to a close, the writer feels that he has very imperfectly accomplished the task undertaken, but trusts it will be accepted by the Senator's many friends as a simple compilation extracted from the public expression upon an appointment which gave such universal satisfaction.

Toronto, December, 1885.